

FILED
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

2004 OCT -6 P 4:41

UNITED STATES OF AMERICA
Plaintiff,

CLERK'S OFFICE
AT BALTIMORE

DEPUTY

v.

CIVIL NO. L-02-3697

5 JENKINS ROAD, CHESAPEAKE
CITY, MARYLAND,
Defendant.

ORDER

This is a civil forfeiture case. On November 13, 2002, the government filed a verified Complaint, seeking the forfeiture of 5 Jenkins Road, Chesapeake, Maryland, and all buildings, appurtenances, and improvements thereon. The Complaint alleged that the owner of the property, Wayne Byerly, used it to facilitate his manufacture of marijuana, and that the property was purchased with proceeds traceable to his illegal drug sales.

On December 26, 2002, Mr. Byerly filed a claim to the property, alleging that it had no substantial connection to any criminal activity. That day, Mr. Byerly also moved to stay this civil forfeiture proceedings pending the resolution of a criminal proceeding against him in the Circuit Court for Cecil County, Maryland. This Court granted the stay.

On April 10, 2003, Mr. Byerly pleaded guilty in state court to possession of marijuana with intent to distribute.

On November 21, 2003, the government moved for summary judgment. On July 20, 2004, having received no opposition, the Court granted summary judgment, and decreed that all rights in the property were forfeited to the government.

On July 30, 2004, Mr. Byerly moved this Court to reconsider. Mr. Byerly's Counsel explained that he had inadvertently misplaced the government's motion for summary judgment, and, therefore, failed to oppose the motion. Counsel seeks to re-open the case solely to challenge the constitutionality of the forfeiture under the Excessive Fines Clause of the Eighth Amendment. Government Counsel does not oppose re-opening the case for the narrow purpose of addressing the Excessive Fines issue

Accordingly, the Court hereby:


(i) GRANTS Mr. Byerly's Motion to Reconsider (Docket No. 11);

VACATES the Court's July 20, 2004 Order (Docket No. 10);

DIRECTS the Clerk of the Court to REOPEN this Case; and

DIRECTS that, within three weeks of the date of this Order, Mr. Byerly shall file an Answer to the Complaint; and a Memorandum in Opposition to the government's motion for summary judgment, limited to the Eighth Amendment Excessive Fines issue. The government shall file its reply two weeks thereafter. Mr. Byerly shall file his rebuttal within 10 days of the government's reply.

It is so ORDERED this 4TH day of OCTOBER 2004.


Benson Everett Legg
Chief Judge